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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,936	03/01/2004	Charles John Call	MESO0072	3230

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LAW OFFICES OF RONALD M ANDERSON
600 108TH AVE, NE
SUITE 507
BELLEVUE, WA 98004

EXAMINER	
ALEXANDER, LYLE	

ART UNIT	PAPER NUMBER
1797	

MAIL DATE	DELIVERY MODE
11/19/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/790,936	CALL ET AL.	
	Examiner	Art Unit	
	Lyle A. Alexander	1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 September 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *27-46,57-62,64 and 65* is/are pending in the application.

4a) Of the above claim(s) *64 and 65* is/are withdrawn from consideration.

5)☐ Claim(s) *57-62* is/are allowed.

6)☒ Claim(s) *27-42 and 44-46* is/are rejected.

7)☒ Claim(s) *43* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *10/6/08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 27-46 and 58-62 , drawn to an air sampling apparatus with a homing or translocation means, classified in class 422, subclass 66.

II. Claims 64-65, drawn to a method of depositing a particulate sample on a surface that is regenerated without being removed from the device, classified in class 436, subclass 177.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the method can be practiced by another and materially different apparatus such as one where that does not require a homing or translocation means.

Newly submitted claims 64-65 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: See the above restriction analysis of the claims.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 64-65 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 39-46 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The new claim language "without removing the collection surface from the device" is new matter. Applicants' point to figure 26 and paragraphs[0276-277] of the PG-PUB document to support these limitations. These references to the original specification do not actually state or teach "without removing the collection surface from the device" and the Office maintains these limitations are new matter.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 27-28,32-33,35-40,42 and 44-56 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Danylewych-May et al.

See the appropriate paragraph of the 7/12/08 Office action.

With respect to claim 27 new limitations specifying analysis of the particles while retained on the collection surface. Danylewych-May et al. teach analysis of the particles on the collection surface which is indistinguishable from the instant claim language.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 29-31,41 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Danylewych-May et al.

See the above 35 USC 102(b) rejections over Danylewych-May et al. and the appropriate paragraph of the 7/17/08 paper relating to the 35 USC 103 rejections.

Claims 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Danylewych-May et al. in view of Beverly et al.

See the above 35 USC 102(b) rejections over Danylewych-May et al. and the appropriate paragraph of the 7/17/08 paper relating to the 35 USC 103 rejections.

Allowable Subject Matter

Claim 43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 57-62 are allowed.

The following is an examiner's statement of reasons for allowance: In addition to the remarks of record, the cited prior art fails to teach or suggest the claimed structure that includes a prime mover.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

Applicant's arguments filed 9/4/08 have been fully considered but they are not persuasive.

Claim 27:

Applicants' argue Danylewych-May et al. do not teach a device that analyzes the particles while retained on the collection surface. These remarks are not convincing because the independent claims are sufficiently broad to have been properly read on Danylewych-May et al. Specifically, in the absence of claiming a particular type of analysis, desorbing the sample from the surface is considered part of the analysis. The limitations directed to mass spectrometry are identical to the MS analysis taught by Danylewych-May et al.

Applicants' argue Danylewych-May et al. do not teach a mechanical homing sensor that automatically moves the collection surface. Danylewych-May et al. teach means to mechanically and automatically orient the sample within the holder for further analysis. In the absence of claiming specific means to accomplish these functions, the Office maintains the pending claim language is sufficiently broad to have been properly read on Danylewych-May et al. who teaches mechanical means that "automatically" move/adjust the collection surface in the proper orientation for analysis. Applicants' further argue Danylewych-May et al. is directed to controlling the sample analysis by a person whereas the instant invention is "automatic." The Office maintains that all analysis procedures are ultimately controlled by a "person" and the automation of well known process or apparatus is within the skill of the art.

Applicants' state Danylewych-May et al. does teach reuse of the sample collection surface, but fails to teach the claimed "surface regenerator." The Office maintains the teaching of reusing the sample collection surface is indistinguishable from the claimed "regenerator" as both accomplish the identical function.

Claim 39:

Applicants' argue Danylewych-May et al. fail to teach "regenerating the surface without removing it from the device." The Office maintains the new 35 USC 103 rejection above that it would have been advantageous to regenerate the surface while still in the device.

Claim 57:

Applicants' remarks concerning claim 57 was convincing and the 35 USC 102(b) rejections will be vacated.

Claim 34:

Applicants' traverse the 35 USC 103 rejection over claim 34 stating Danylewych-May et al. in view of Beverly fails to teach the claimed "felt wheel." In the absence of better describing what structure is intended by a "felt wheel", the Office maintains the taught wheel of paper has been properly read on the pending claim.

Applicants' remarks concerning claims 38,43,46 were convincing and the 35 USC 102(b) rejections will be vacated.

Conclusion

This is a RCE of applicant's earlier Application No. 10/790,936. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory

action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Tuesday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lyle A Alexander
Primary Examiner
Art Unit 1797

/Lyle A Alexander/
Primary Examiner, Art Unit 1797